

The opinion in support of the decision being entered  
today was not written for publication and  
is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MICHAEL KRYSIAK, DANIEL P. MADIGAN,  
BRYAN A. FISH and RONALD D. EICHHORN

MAILED

AUG 26 2005

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Appeal No. 2005-2031  
Application No. 09/510,782

ON BRIEF

Before KIMLIN, KRATZ and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-9

Claim 1 is illustrative:

1. An agglomeration/granulation method for creating a  
fortified mulch comprising ;

adding paper fibers to a pin mixer;

adding nitrogen, phosphorous and potassium  
fortifiers and a binding agent before or at said mixer,

mixing and tumbling said paper fibers, said  
fortifiers and said binding agent in said mixer,

drying contents of said mixer.

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The examiner relies upon the following references as evidence of obviousness:

Clendinning et al. (Clendinning)	3,901,838	Aug. 26, 1975
Moore	5,266,097	Nov. 30, 1993
Decker	5,806,445	Sep. 15, 1998
Spittle	5,916,027	Jun. 29, 1999
Morgan	6,029,395	Feb. 29, 2000
		(filed Jan. 05, 1998)

Appellants' claimed invention is directed to a method of making fortified mulch comprising adding nitrogen, phosphorous and potassium fortifiers, paper fibers and a binding agent to a pin mixer, mixing and tumbling the ingredients, and then drying them.

The appealed claims stand rejected under 35 U.S.C. § 103 as follows:

- (a) Claims 1, 4-6, 8 and 9 over Spittle in view of Morgan
- (b) Claim 2 over the stated combination of references, further in view of Moore,
- (c) Claim 3 over the stated combination of references further in view of Clendinning, and
- (d) Claim 7 over the stated combination of references further in view of Decker.

Appellants submit at page 5 of the brief that "[c]laims 1, 4-6, 8 and 9 are grouped together." Accordingly, claims 4-6, 8 and 9 stand or fall together with claim 1.

We have thoroughly reviewed each of appellants' arguments for patentability, as well as the Declaration evidence in support thereof. However, we are in agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections.

Appellants' principal argument is that the claimed invention is directed to a method of tumbling and a mixer agglomeration whereas the method in Spittle is a pressure compaction process. Appellants refer to the Hoffmann Declaration for stating that "[t]he mixing and tumbling agglomeration/granulation [of the present invention] differs substantially from the pressure compression extrusion method described in Col 3 of Spittle." (page 8 of brief, penultimate paragraph).

We concur with the examiner that appellants' Declaration evidence and arguments based thereon are not persuasive in

distinguishing methods within the scope of the appealed claims from those fairly taught by Spittle. As noted by the examiner, by virtue of the "comprising" language, the claims on appeal are "open" to steps in addition to those specifically recited, including pelletizing pressure-compression steps. Indeed, appealed claim 2 recites the use of a pan pelletizer.

Spittle expressly teaches the claimed steps of adding paper fibers to a mixer, adding nitrogen, phosphorous, and potassium fortifiers to the mixer, and agitating the mixture, which would include the claimed mixing and tumbling steps. While Spittle does not specify any particular apparatus for performing the agitation, we agree with the examiner that it would have been obvious for one of ordinary skill in the art to use the admittedly known pin mixer to perform the agitation. Also, although the examiner relies on Morgan for the obviousness of adding a binding agent to the mixture of Spittle, we find that Spittle teaches the inclusion of such. To wit, Spittle expressly teaches the addition of a water absorbent polymer to the mixture for various purposes, including to hold the mulch flakes together and keep it from falling apart. Manifestly, this is the function of a binding agent.

Also, we agree with the examiner that, notwithstanding the opinions expressed in the Declaration evidence, Spittle does not teach the use of a pressure compression extrusion method to form the pellets. Again, significantly, appellants claim the use of a pan pelletizer. Although appellants state that "Spittle would not use a pan pelletizer which is used in an agitation process" (page 13, penultimate paragraph), Spittle specifically discloses that the mixture is agitated which, necessarily, requires an apparatus to perform the agitation process.

As a final point, we note that appellants base no arguments upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the inference of obviousness established by the applied prior art.

In conclusion, based on the foregoing, and the reasons set forth by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

*Edward C. Kimlin*

EDWARD C. KIMLIN )  
Administrative Patent Judge )

*Peter F. Kratz*

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Administrative Patent Judge ) BOARD OF PATENT  
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